FILE COPY

NUMBER 9 ORIGINAL

Supreme Court, U.S.
FILED
DEC 3 1971
E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

October Term, 1971

UNITED STATES OF AMERICA,

v.

STATE OF LOUISIANA, ET AL.

MOTION OF THE STATE OF LOUISIANA FOR RELIEF PURSUANT TO RULE 60(b) FEDERAL RULES OF CIVIL PROCEDURE

JACK P. F. GREMILLION,
Attorney General

JOHN L. MADDEN
Assistant Attorney General

PAUL M. HEBERT,
VICTOR A. SACHSE,
OLIVER P. STOCKWELL,
FREDERICK W. ELLIS,
WILLIAM E. SHADDOCK,
W. THOMAS TETE,
Special Assistant Attorneys General
State of Louisiana,
State Capitol,
Baton Rouge, Louisiana 70804

INDEX

Motion of the State of Louisiana For Relief Pursuant to Rule 60(b) Federal Rules of Civil Procedure 1

Memorandum in Support of the Motion of the State of Louisiana for Relief Pursuant to Rule 60(b) Federal Rules of Civil Procedure 4

CITATIONS

STATUTES

Edward I St. Westminster 2, 13 Ed. I c 24 7

Submerged Lands Act 67 Stat. 29, 43 U. S. C. 1301-1315 5

Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C. 1331-1343 5

CASES

Ackermann v. United States, 340 U.S. 193 7

Klapprott v. United States, 335 U.S. 601 7

State of Rhode Island v. State of Louisiana, et al., 347 U.S. 272 6

United States v. State of California, 332 U.S. 19 ..... 2, 4, 5, 6

United States v. State of Louisiana, et al.,
339 U.S. 699 ..... 4, 5

United States v. States of Maine, et al.,
395 U.S. 955 ..... 2, 5

United States v. States of Maine, et al.,
398 U.S. 947 ..... 2, 5

United States v. State of Texas, 339 U.S. 707 5

MISCELLANEOUS

Moore's Federal Practice 7

Presidential Proclamation No. 2667,
September 28, 1945, 59 Stat. 884 5

Rule 60(b) Federal Rules of Civil Procedure 1, 4-5, 7

Rule 9 of Supreme Court Rules 1

Treaty of Amity of 1819 between
United States and Spain, 8 Stat. 252 2

NUMBER 9 ORIGINAL

In the Supreme Court of the United States

October Term, 1971

UNITED STATES OF AMERICA,

v.

STATE OF LOUISIANA, ET AL.

MOTION OF THE STATE OF LOUISIANA FOR RELIEF PURSUANT TO RULE 60(b) FEDERAL RULES OF CIVIL PROCEDURE

Availing itself of Rule 60(b) of the Federal Rules of Civil Procedure promulgated by this Court and made applicable to original actions by Rule 9 of this Court, the State of Louisiana moves that the decisions that Louisiana's territory stopped at the water's edge and does not go three leagues into the Gulf of Mexico be reconsidered and corrected.

For cause, Louisiana shows, as set forth in pleadings and memoranda opposing the motion of the United States for entry of a Supplemental Decree (No. 3):

I.

The western boundary of the State of Louisiana and the eastern boundary of the State of Texas is the line established by the United States and Spain in the Treaty of Amity of 1819 (8 Stat. 252) and the southeast corner of Texas, which has been recognized as being 3 leagues into the Gulf of Mexico at the mouth of the Sabine River, is the southwest corner of Louisiana, which accordingly is also 3 leagues into the Gulf of Mexico at the mouth of the Sabine River.

II.

Evidence of the fact of this water boundary so located which was not submitted to this Court at any earlier hearing has been developed in a present dispute between the two states being heard by a Special Master appointed by this Court.

III.

Rejection of a motion by the United States for judgment in United States of America, Plaintiff, against the States of Maine, etc. 34 Orig. 1968, 35 Orig. 1969, by the appointment of a Special Master on June 8, 1970, indicates that the Court will reconsider the decision in *U.S. v. California*, 332 U.S. 19, out of which this litigation has arisen and which to this point has been held conclusive as to Louisiana although it was not a party to that litigation.

COPY PRINTE

IV.

This motion serves to make explicit what is implicit in pleadings and memoranda already filed by Louisiana as noted by the United States in its Reply, page 4.

Accordingly, Louisiana asks that this motion be filed and be considered along with the Motion of the United States and responses thereto by Louisiana.

JACK P. F. GREMILLION,
Attorney General

JOHN L. MADDEN
Assistant Attorney General

PAUL M. HEBERT,
VICTOR A. SACHSE,
OLIVER P. STOCKWELL,
FREDERICK W. ELLIS,
WILLIAM E. SHADDOCK,
W. THOMAS TETE,
Special Assistant Attorneys General
State of Louisiana,
State Capitol,
Baton Rouge, Louisiana 70804

By: /s/ Jack P. F. Gremillion
/s/ Paul M. Hebert
/s/ Victor A. Sachse
/s/ Oliver P. Stockwell

ED CLOSE TO EDGE

In the
Supreme Court of the United States

October Term, 1971

NO. 9, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

VS.

STATE OF LOUISIANA, ET AL.

MEMORANDUM IN SUPPORT OF THE MOTION OF THE STATE OF LOUISIANA FOR RELIEF PURSUANT TO RULE 60(b) FEDERAL RULES OF CIVIL PROCEDURE

STATEMENT

Louisiana complains of the decision that the French, later Spanish, colony from which it was formed had no boundary in the Gulf of Mexico[1] a decision based on the case of *U.S. v. California*, 332 U.S. 19, to which Louisiana was not a party, and which was based on the conclusion that the original colonies on the Atlantic coast had no boundaries in the ocean. On that basis the United States seeks a decree against Louisiana at the very same time the Atlantic coast states have rebuffed a motion of the United States that the California decision is binding upon them. This is the extraordinary situation which Louisiana firmly believes warrants the use of the principle of

1. United States v. State of Louisiana, et al. 339 U.S. 699.

Rule 60(b) Federal Rules of Civil Procedure, devised by this Court, to properly balance the interests of justice with respect to the finality of judgments.

In 395 U.S. 955 the Court granted the United States leave to file a bill of complaint against the States of Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida. (Original 34, October Term, 1968.)

In its complaint, the supporting memorandum, the United States asserted that the thirteen original colonies did not separately acquire a belt into the sea or the soil under it and it relied on *United States v. California*, 332 U.S. 19, for this position. The United States referred to Presidential Proclamation No. 2667, September 28, 1945, 59 Stat. 884, the Submerged Lands Act of 1956, 67 Stat. 29, 43 U.S.C. 1301-1315, and the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U.S.C. 1331-1343, as a limited grant, and referred to the more extensive claims of the States. The United States noted that, "Eleven of the thirteen proposed defendants are original states. Maine and Florida, of course, are not," and added "*but the same principles govern their claims, as it did the claims of California, Louisiana and Texas, by virtue of the Equal Footing Clause.* See particularly, *United States v. Texas*, 339 U.S. 707, 717-720." Footnote 3, page 13.

In the suit against the Atlantic coastal States, the Court did not consider the issue closed as the United States contended and did not grant its motion for judgment. Instead, on June 8, 1970, it referred the claims of the States to a Special Master. 398 U.S. 947.

Those States are in the process of offering evidence to

Judge Maris, the Special Master, designed to show that in the 16th and 17th centuries the English Crown had claimed rights to natural resources in waters and *that reference to islands within specified distances from their shores necessarily recognized as territory of the littoral state the area from the mainland as measured by the distance to the islands.* Charters, patents, deeds and other conveyances leading to the formation of the colonies conveyed those same rights which the colonies asserted. Those States are showing that they had not at all abandoned such rights when they formed the Union. Further, they are proposing to show that the exercise of such rights by the States would not interfere with the exercise of the "paramount rights" of the federal government; and that the assertion of such rights beyond three miles was in accord with international law in the 16th and 17th centuries. It is abundantly clear that France made similar claims to such rights as did Spain, though the latter nations claimed three leagues while England claimed six leagues at that period; and Louisiana comes from areas claimed by France and Spain on and in the Gulf of Mexico.

Louisiana believes that the action of this Court in rejecting the motion for summary judgment sought by the United States in its proceeding against the State of Maine and the other Atlantic coastal States, clearly indicates that the Court recognized the weakness of the predicate upon which the decision in *U.S. v. State of California,* 332 U.S. 19 was based. Indeed, Justice Douglas indicated the possibility of such reconsideration in *Rhode Island v. Louisiana,* 347 U.S. 272.

Louisiana thinks the matter should be reconsidered and hopefully that it will be modified so that traditionally recognized American rights not even now claimed by any foreign

government, will not be cast away in a domestic dispute. It would be detrimental to the concept of justice to find that "islands" within a certain distance from coast marks a water boundary for the Atlantic Coast States but not for Louisiana. Cf. Edward I. St. Westminster 2, 13 Ed.I c 24.

This is the situation which calls for the application of Rule 60(b) devised by this Court to properly balance the needs of justice with concern for the finality of judgments.

Justice Black, speaking for this Court, interpreted Rule 60(b) in *Klapprott v. United States* thus:

> "In simple English, the language of the 'other reason' clause, for all reasons except the five particularly specified, vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." 335 U.S. 601, 614.

In *Ackermann v. United States*, 340 U.S. 193, Justice Minton pointed out that circumstances must be extraordinary, to bring one within Rule 60(b) (6). Surely this matter meets that test and, subject to such limitation, it remains true that "clause (6) is a grand reservoir of equitable power to do justice in a particular case." Moore, ¶60.27[2].

Louisiana has already called this Court's attention to the evidence adduced before the Special Master in State of Texas v. State of Louisiana, No. 36 Original, corroborating the position that the southeast corner of Texas, admittedly three leagues into the Gulf of Mexico, is the southwest corner of Louisiana, also three leagues into the Gulf of Mexico. See Louisiana's Objection filed June 25, 1971. In addition in the proceedings before the Special Master in this case, Louisiana has introduced evidence that illustrates departure by the United States from its usual three-mile position to leave open the pos-

sibility of asserting Spanish six-mile claims for some purposes. Louisiana would urge that even if the United States did not adopt the six-mile position as a matter of international law, it would be the proper measure for her seaward claims if three leagues are not to be recognized. The Special Master should be given an opportunity to consider this evidence that is already before him for the bearing on the question of the breadth of Louisiana's historic claims, as well as to permit the parties to introduce further new evidence. Louisiana here refers to Louisiana Exhibit 283, Tab. 9, which shows that when the United States acquired Puerto Rico this historic claim passed to the United States. The State Department, as shown by correspondence between the Secretary of State and Secretary of Interior, sought to preserve the possibility of asserting these historic rights. This correspondence runs to some sixteen pages and is too bulky to be reproduced here, but it is fully available to the Court as it is in the hands of its Special Master.

The conclusion of this Court in an earlier stage of this litigation to consider Texas, Mississippi, Alabama, and Florida, along with Louisiana, lays the predicate for postponing final action in this case until all the evidence for all of the States is in. The merit of Louisiana's position is emphasized by remembering that Louisiana, too, sought and was denied the opportunity to produce evidence.[2] Meanwhile, no harm is done to the United States which actually has the funds produced from the combined disputed area and has made no agreement to pay interest on such funds if they are finally held to belong to Louisiana.

---

2. No. 15 Original, October Term 1955, February 20, 1956, paragraph 4, page 3 of Opposition and page 36 of the supporting brief.

PROOF OF SERVICE

I, the undersigned, authorized to act on behalf of the State of Louisiana, certify that copies of the foregoing motion and memorandum have been properly served on the 3rd day of December, 1971, upon the Solicitor General and Attorney General of the United States, Department of Justice, Washington, D. C. 20530.

/s/ Paul M. Hebert